

# **4 FAH-3 H-500 PAYROLL, TIME AND ATTENDANCE, AND LEAVE ACCOUNTING**

## **4 FAH-3 H-510 GENERAL POLICIES AND PROCEDURES**

### **4 FAH-3 H-511 GENERAL**

*(TL:FMP-4; 6-15-95)*

Information common to all topics covered in 4 FAH-3 H-500 , such as scope and applicability, relevant authorities, the applicable internal controls, and definitions of commonly used terms is found in 4 FAH-3 H-510 .

### **4 FAH-3 H-512 GENERAL POLICY**

*(TL:FMP-4; 6-15-95)*

- a. It is the policy of the Department to meet generally accepted accounting principles and pay employees on a biweekly basis twelve days after the end of the pay period, after making all deductions and adjustments, and conforming to rules and regulations unless stated otherwise in this chapter.
- b. The Department will issue Form DS-1216, Earnings and Leave Statement to each employee on a biweekly basis. The employee is responsible for verifying the accuracy and correctness of the Earnings and Leave Statement and reporting any errors to the appropriate authorities.
- c. Salaries and allowances of U.S. citizens paid through Consolidated American Payroll Processing System (CAPPS) are paid in U.S. dollars while Foreign Service Nationals (FSNs) and AMCITs paid through the FSN Payroll System are paid in the currency of the country in which employed except as otherwise authorized by the proper authority.
- d. The Department will use electronic funds transfer to make payroll and annuity disbursements to employees, personal services contractors, and annuitants wherever feasible.
- e. The Department will report each U. S. citizen's or permanent resident alien's earnings and deductions to the appropriate agencies and will issue a W-2 Statement to the individual annually.

## **4 FAH-3 H-513 SCOPE**

### **4 FAH-3 H-513.1 Description and Purpose**

*(TL:FMP-4; 6-15-95)*

Chapter 4 FAH-3 H-500 is issued pursuant to policy stated in 4 FAM 500 and contains the regulatory information and procedures applicable to the areas of payroll, tax reporting and the Foreign Service Retirement and Disability Fund. It includes information on maintaining daily attendance and leave records, computing, vouchering and paying salaries to both U.S. citizen and Foreign Service National employees and personal services contractors, tax reporting, and the maintenance of the Foreign Service Retirement and Disability Fund.

### **4 FAH-3 H-513.2 Organization and Layout**

*(TL:FMP-4; 6-15-95)*

The organization of 4 FAH-3 H-500 reflects the various functions that comprise the areas of payroll, tax reporting, and the Foreign Service Retirement and Disability Fund. 4 FAH-3 H-500 is organized as follows:

- (1) 4 FAH-3 H-510 —General Policies and Procedures provides information common to all topics covered in this chapter such as the scope and applicability, the relevant authority, the automated payroll systems used, definitions of common terms, the standard forms used, and the internal controls applicable;
- (2) 4 FAH-3 H-520 —Attendance and Leave provides information on timekeeping functions including the maintenance of time, attendance and leave records, responsibilities associated with such maintenance and reporting requirements of the time, and attendance and leave records;
- (3) 4 FAH-3 H-530 —Computation of Pay and Allowances provides information on the different types of compensation, the requirements to qualify for the various types of compensation, rules related to the computation of gross pay and allowances, and accounting and reporting of the computed compensations;
- (4) 4 FAH-3 H-540 —Payroll Deductions, Contributions, and Adjustments provides information on the mandatory and voluntary employee deductions and other adjustments to be computed and withheld from the employee's compensation and the rules related to such withholdings, any salary overpayments made, and waivers of such overpayments; and

(5) 4 FAH-3 H-550 —Vouching and Payment of Salaries and Allowances describes the basis of vouchering, personnel to be vouchered, method of vouchering, and the time and method of paying salaries, benefits, and allowances.

## 4 FAH-3 H-514 APPLICABILITY

(TL:FMP-4; 6-15-95)

a. 4 FAH-3 H-500 is the single, authoritative, and comprehensive source for the Department's regulations and should be referenced on all matters relating to payroll processing, tax reporting, and Foreign Service retirement. It is intended for use both at overseas posts and domestically by bureaus and offices, and by other agencies serviced by the Department.

b. Unless otherwise stated, references made to the Department refer to worldwide operations of the Department.

## 4 FAH-3 H-515 DEFINITIONS

### 4 FAH-3 H-515.1 Definitions of Documents, Processes, and Actions

(TL:FMP-4; 6-15-95)

a. **Allowance**—An allowance refers to money or equivalent value, furnished or made available, in addition to prescribed rates of pay, to cover such items as quarters, subsistence, clothing, or travel.

b. **Basic Rate**—Generally means the annual salary paid for work during basic workweek hours, exclusive of allowances, premium pay, bonuses or other benefits. See 4 FAH-3 H-531.2-1 for elaboration.

c. **Bonus**—An FSN benefit payment that occurs on a specified date or dates.

d. **Deductions/Withholdings**—Refer to both the mandatory deductions and voluntary deductions that are made from the gross pay of an employee, such as deductions towards retirement, Thrift Savings Plan, U. S. Social Security programs, U.S. Federal, State, and local income tax, and health and life insurance.

e. **Pay Period**—A pay period refers to a time period which covers two administrative workweeks for all employees except those hired on an other-than-annual basis, for whom a pay period is in accordance with the terms of the appointment.

- f. **Timekeeping**—Timekeeping refers to the task of recording or maintaining the hours worked by an employee or personal services contractor.
- g. **Employee**—An employee refers to an individual appointed into the civilian service of a Government agency.
- h. **American Employee**—The term “American employee” is replaced by U. S. citizen employee in conformance with 3 FAM practice.
- i. **U. S. Citizen Employee**—United States citizen appointed to the Foreign Service or Civil Service by the Department (and other agencies where uniform regulations apply). The term replaces the previously used “American employee” and includes FSI/Washington staff who may not be U. S. citizens. The term as used in 4 FAH-3 H-500 excludes AMCITs unless otherwise indicated.
- j. **AMCIT**—An American who is not a family member of a U.S. Government employee who is hired at post of residence into an FSN position and whose compensation and benefits are per the FSN Local Compensation Plan paid through the FSN Payroll System (Foreign Service Act section 311(c) (1)). Statements in 4 FAH-3 H-500 regarding FSN employees are also applicable to AMCITs unless otherwise indicated.
- k. **Foreign Service National Employee (FSN)**—An FSN employee is a non-U. S. citizen directly hired by the U. S. Mission, including third-country nationals (TCNs) but excludes official residence staff as well as consular agents. May also refer to a locally hired expatriate.
- l. **Personal Services Contractor (PSC)**—A PSC is an individual contracted to personally perform an identifiable task under the supervision and control usual to government employees rather than to furnish an end item of supply (Federal Acquisition Regulations 37.101). This employer/employee relationship may involve a U. S. citizen and be payrolled through CAPPS, or a Foreign Service National payrolled through the Foreign Service National Payroll System.
- (1) Note that summer hires or other temporary employment of dependents of Foreign Service employees practically always produce an employer/employee relationship requiring a part-time, intermittent or temporary (PIT) appointment or a personal services contract (PSC). For a very definitive test for employer/employee relationship used by the Internal Revenue Service for taxation purposes, see 4 FAH-3 H-515 Exhibit 515.1 ;

(2) When an employer/employee relationship exists with a U.S. citizen or a U. S. green card holder appropriate U. S. income and Social Security tax withholding is required and payment should be effected through the CAPPs or FSN payroll systems. CAPPs also performs withholding of applicable State and city income taxes; and

(3) The compensation, benefits, and other entitlements of a personal services contractor are determined by the terms of the contract in accordance with Federal Procurement Regulations rather than the entitlements of employees appointed to the Federal service.

m. **Permanent Resident Alien (PRA)**—A PRA is a person who holds a U. S. green card. Note that an FSN, employee or personal services contractor, who holds a U.S. green card is subject to U.S. income and Social Security tax withholding unless totalization agreement provides Social Security Tax exemption. A PRA working in the United States such as an FSI language tutor is subject to applicable State and city tax withholding as well as Federal taxes.

n. **Consolidated American Payroll Processing System (CAPPs)**—Refers to the automated payroll system that is used to process payroll data for U. S. citizen employees, U.S.citizen personal services contractors and all consular agents.

o. **Foreign Service National Payroll System**—Payroll systems operated by the RAMCs to pay Foreign Service National employees, personal services contractors, and AMCITs.

p. **Third-Country National (TCN)**—A TCN is an individual who is neither a citizen of the United States nor of the country in which employed who is employed on a limited appointment or personal services contract, and who is eligible for return travel at U. S. Government expense to their home country or country from which recruited. See 3 FAM 7200 for further elaboration.

## **4 FAH-3 H-515.2 Definitions of Positions and Titles**

*(TL:FMP-4; 6-15-95)*

a. **Administrative Officer**—An officer of the Department who is responsible for the day-to-day operations in a domestic office or bureau or at an overseas post.

b. **Time and Attendance (T&A) Approving Official**—An officer of the Department who is responsible for reviewing, verifying and approving biweekly T&A records for all employees in the office before the T&A data is transmitted to the appropriate payroll system. Review and approval should be made by the official most knowledgeable of the time worked and absence of the employees involved, normally the immediate supervisor.

c. **Certifying Officer**—An accountable officer who has been designated to certify vouchers for payment. The certifying officer shall make such examination of the facts underlying a voucher as is necessary, taking into consideration the underlying systems and controls, to provide reasonable assurance that payment is correct and proper. Since the officer certifying the payroll voucher relies on confidence in the management controls of the payroll process and the absence of any information to the contrary, any event creating an insufficiency of funds requires immediate notification to the certifying officer. An absence of a continuing resolution is one example. 4 FAH-3 H-430 also discusses voucher certification.

d. **Timekeeper**—An employee who has been assigned the task of discharging the timekeeping function as described in the Timekeeper's Handbook.

## 4 FAH-3 H-516 AUTHORITY

(TL:FMP-4; 6-15-95)

Departmental policies derive their authority from three major sources: statutes, regulatory agencies' regulations and directives, and other sources such as the Foreign Affairs Manuals (FAMs), Foreign Affairs Handbooks (FAHs), and the Standardized Regulations (Government and Civilians, Foreign Areas (GC, FA)). This section lists the major sources and regulations, and briefly describes each as it relates to payroll processing and the Foreign Service Retirement and Disability Fund:

- (1) United States Code Title 5—Government Organizations and Employees;
- (2) United States Code Title 22—Foreign Relations and Intercourse;
- (3) United States Code Title 26—Internal Revenue Code;
- (4) The Foreign Service Act of 1980 as amended (22 U.S.C. 3900);
- (5) Chapter 37, Federal Acquisition Regulations (FAR), Code of Federal Regulations, Title 48;

- (6) The Fair Labor Standards Act of 1938, as amended (29 U.S.C. 200);
- (7) Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701-3719);
- (8) The Federal Managers' Financial Integrity Act of 1982 (Pub. L. 97-255);
- (9) The Privacy Act of 1974;
- (10) 26 Code of Federal Regulations—Internal Revenue;
- (11) GAO Policies and Procedures Manual for Guidance of Federal Agencies;
- (12) Title 2—Accounting (2 GAO);
- (13) Title 6—Payroll (6 GAO);
- (14) Treasury Financial Manual (TFM), Volume I (ITFM), including:
  - (a) Part 3—Payrolls, Deductions, and Withholdings (1 TFM 3); and
  - (b) Part 4—Disbursing (1 TFM 4); and
- (15) OPM Directives.

## **4 FAH-3 H-517 PAYROLL SYSTEMS**

*(TL:FMP-4; 6-15-95)*

a. It is the policy of the Department to maintain automated payroll processing systems which conform to the standards and requirements prescribed by GAO. The automated payroll system will be fully documented in systems manuals, which conform and supplement the requirements prescribed in this chapter.

b. A serviced agency must provide its regulations to support any deviation from the application of Department policy and procedures in 4 FAM 500 and 4 FAH-3 H-500 .

### **4 FAH-3 H-517.1 Standardized Systems**

*(TL:FMP-4; 6-15-95)*

A minimum number of automated payroll systems must be used. The payroll systems should interact with the personnel, accounting, general ledger, and financial management systems. Any new system proposed or major revision to a current system must be reviewed by FMP/F/FMS for compliance with 4 FAM and 4 FAH-3 before it can be implemented.

## **4 FAH-3 H-517.2 Types of Payroll Systems**

### **4 FAH-3 H-517.2-1 Consolidated American Payroll Processing System (CAPPS)**

*(TL:FMP-4; 6-15-95)*

a. This payroll system pays appointed U.S. citizen employees as well as U.S. citizen personal services contractors (PSCs). The few permanent resident aliens employed in Washington in teaching and translation as well as consular agents are also payrolled through CAPPS. Excluded are resident U.S. citizens employed in the personnel category AMCITs, who are compensated per the local compensation.

b. It is the policy of the Department that compensation for personal services be paid through a payroll system rather than through a voucher system. Personal services include all summer hires and temporary employment of dependents except those rare instances where the absence of a common law employer/employee relationship can be documented. (See 4 FAH-3 H-515 Exhibit 515.1 .)

c. Master file data on appointed personnel is derived via interface with the personnel system except for overseas part-time, intermittent, and temporary employees who are entered by the RAMCs from the post created Form SF-50, Notification of Personnel Action, and serviced agency personnel overseas entered by the RAMCs from Authority to Pay cables. PSCs are manually entered at the RAMCs overseas and by allottees under direction of CAPPS staff, domestically, from Form JF-62, Personal Services Contracting Action, created by the allottee.

d. The period of work and leave is derived from a biweekly T&A submission. T&As must be transmitted to the CAPPS for all payrolled employees and PSCs subject to the following exceptions:

(1) In the event Washington telecommunications problems prevent receipt of the file, scheduled hours will be paid with any necessary adjustment in the following pay period;



(2) In the absence of a T&A record for a specific employee with a domestic organization code, scheduled hours may be paid for one pay period upon the timekeeper's verbal confirmation followed by a manual T&A report; and

(3) In the absence of a T&A record for a specific full time permanent employee with an overseas organization code, scheduled hours may be paid for up to three pay periods due to the extended intransit nature of worldwide transfers.

e. Payments are charged to the appropriation/allotment as indicated by the personnel or contracting action.

#### **4 FAH-3 H-517.2-2 Foreign Service National Payroll System (FSN Payroll System)**

*(TL:FMP-4; 6-15-95)*

a. The FSN Payroll System compensates personnel in accordance with the local compensation plan based on prevailing rates and practices authorized in section 408 of the Foreign Service Act. This includes Foreign Service National employees and personal services contractors as well as AMCITs (defined in 4 FAH-3 H-516.1).

b. The payment is processed by the RAMC from post-created Forms SF-50, Notification of Personnel Action, or JF-62, Foreign National Personal services Contracting Action, through the FSN payroll system pursuant to time and attendance reporting. Absence of a T&A report for a specific individual prevents any biweekly payment to that individual. However, a RAMC may pay scheduled hours for one pay period when a post's T&A file is not received or is not readable. Corrections should be effected in the following pay period. Any payment to FSN or AMCIT staff of an evacuated post must be authorized by the regional bureau's executive director biweekly.

#### **4 FAH-3 H-517.3 Payroll Data to be Maintained on the System**

*(TL:FMP-4; 6-15-95)*

The automated payroll systems must be capable of maintaining the following kinds of data:

(1) Permanent data or fixed data for each employee such as, salary, allowance rates, differential rates, deduction and contribution information, etc., as detailed 4 FAH-3 H-530 and 4 FAH-3 H-540 ;

(2) T&A data submitted on a biweekly basis for each employee which can be used to compute biweekly earnings, leave taken, and compensatory time balances; and

(3) Information on the cumulative gross earnings, deductions, allotments of pay, net pay advances, and leave balances on a pay period basis for each employee. This accumulation is maintained on either a tax year or a leave year basis.

## **4 FAH-3 H-518 FORMS**

*(TL:FMP-4; 6-15-95)*

a. The United States Code (31 U.S.C. 3511) authorizes the Comptroller General of the United States, after consulting with the Secretary of the Treasury and the Director of the Office of Management and Budget, to prescribe for each executive agency, the principles, standards, and related requirements for accounting, including the use of standard forms.

b. The use of standard forms is mandatory unless exempted by law or by the Directives Management Branch (A/IM/IS/OIS/RA/DIR). Advance approval is required for adoption of agency forms in place of standard forms.

## **4 FAH-3 H-519 MANAGEMENT CONTROLS**

### **4 FAH-3 H-519.1 Scope**

*(TL:FMP-4; 6-15-95)*

a. Management controls are operational checks and balances that ensure that a task will be carried out as planned in the most efficient and effective way possible. The Department's Management Control Handbook provides details on management control objectives and procedures.

b. This section does not include the specific management controls related to the Foreign Service Retirement and Disability Fund.

c. In the payroll processing area, management controls refer to those checks and balances that ensure that:

(1) The entire process, of the recording and maintenance of T&A records, the computation of pay, and the reporting of amounts paid and amounts withheld, is carried out effectively and efficiently;

(2) All applicable laws, regulations, and policies are being complied with;

(3) Resources are being safeguarded; and

(4) Accurate and reliable accounting information is being generated.

## **4 FAH-3 H-519.2 Authority**

*(TL:FMP-4; 6-15-95)*

Management controls are required to comply with existing statutes, regulatory agencies' directives and departmental Directives. The major authorities for management controls are:

- (1) The Accounting and Auditing Act of 1950, which requires the Comptroller General to prescribe the principles, standards, and related requirements for the accounting to be observed by each federal agency. The head of each agency is responsible for establishing and maintaining systems of accounting and management controls;
- (2) The Federal Managers' Financial Integrity Act of 1982, Pub. L. 97-255 (31 U.S.C. 3512(b));
- (3) OMB Circulars A-123 (1986) and OMB Circular A-127 (1993);
- (4) GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 2—Accounting, Appendix II; and
- (5) Department of State's "Management Control Directive," revised August 26, 1985.

## **4 FAH-3 H-519.3 Requirements**

*(TL:FMP-4; 6-15-95)*

The GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 2—Accounting, Appendix II, discusses management control standards of reasonable assurance, supportive attitude, competent personnel, control objectives, control techniques, documentation, recording of transactions, execution of transactions, separation of duties, supervision, access to and accountability for resources, and prompt resolution of audit findings. Some aspects are discussed further as they relate specifically to payroll.

### **4 FAH-3 H-519.3-1 Documentation**

*(TL:FMP-4; 6-15-95)*

There should be complete, accurate, and easily accessible documentation for the use of all persons involved in payroll processing. The documentation should include policy as well as procedures manuals, work flow descriptions, and systems manuals. The documentation must reflect current laws and regulations and must be revised and updated for changes in the regulations,

tax rates, and so on.

#### **4 FAH-3 H-519.3-2 Training**

*(TL:FMP-4; 6-15-95)*

Personnel engaged in pay, leave, and allowance activities must be adequately trained in the documented policies and procedures applicable to the area to enable them to perform operations efficiently, effectively, and economically and to identify and resolve inconsistencies in payroll related information that is submitted, processed, and reported.

#### **4 FAH-3 H-519.3-3 Maintenance of an Audit Trail**

*(TL:FMP-4; 6-15-95)*

a. Any corrections or adjustments to data in official records must be approved in writing or through electronic signature by an authorized official to maintain an audit trail.

b. A record of all changes made after documents have been approved and certified must be maintained in accordance with Departmental records retention policy.

c. Changes made to data must be made in such a way that an audit trail is maintained to provide reference to documents which show the original and the new data and the authorization for the change.

#### **4 FAH-3 H-519.3-4 Separation of Duties**

*(TL:FMP-4; 6-15-95)*

a. In accordance with prudent management control practices, the following operations should be segregated from one another:

- (1) Authorization of pay and entitlements;
- (2) Recording of T&A data;
- (3) Payroll computations;
- (4) Certification of payments;
- (5) Recording of payroll data in the accounts;
- (6) Distribution of pay;
- (7) Review of payroll transactions;

- (8) Automated system development;
- (9) System testing;
- (10) System implementation; and
- (11) System maintenance.

b. At bureaus/offices and posts with limited staff, duties might overlap. In such instances, there should be a system of checks and balances and active supervision to ensure that responsibilities are being properly carried out.

c. Overseas posts with limited staff might require, in situations other than those referred to above, the same individual to perform conflicting functions. In such instances, if these regulations cannot be met, an alternate system must be approved by the current next higher level of management and documentation retained in post files for audit purposes.

#### **4 FAH-3 H-519.3-5 Recording and Maintenance of Time and Attendance Records**

*(TL:FMP-4; 6-15-95)*

There should be procedures to ensure that the timekeeping function is carried out effectively and accurately. All recorded T&A data should be promptly reported to the payrolling office to enable the prompt computation and payment to the employees and personal service contractors. The intent is to facilitate processing and maintain updated information on attendance and leave records for computation, review and audit purposes.

#### **4 FAH-3 H-519.3-6 Management Controls for Computerized Payroll Operations**

*(TL:FMP-4; 6-15-95)*

Periodic preventive maintenance steps must be taken on hardware and software to ensure the efficient working of the automated payroll system. Appendix III of the previously mentioned GAO Policy and Procedures Manual, Title 2, provides more detailed guidance.

#### **4 FAH-3 H-519.3-7 Pay Controls**

*(TL:FMP-4; 6-15-95)*

Overall control procedures should be incorporated and performed regularly to provide reassurance that payroll data is correctly processed; for

example, use of master control totals for data elements by computing such totals on certain fields before payroll transactions are entered, adding totals computed from transactions entered during the cycle, and comparing to the grand total at the completion of the processing cycle.

#### **4 FAH-3 H-519.3-8 Restricted Access**

*(TL:FMP-4; 6-15-95)*

Access to the following must be restricted to authorized personnel:

—Payroll data and records (contains information protected by the Privacy Act of 1974); and

—Payroll processing equipment and operations and related software.

#### **4 FAH-3 H-519.3-9 Management Compliance Audits**

*(TL:FMP-4; 6-15-95)*

a. Periodic risk assessment of payroll operations will be conducted in accordance with the Department's Management Control Program under the Federal Managers' Financial Integrity Act. Assessment findings may indicate need for more in-depth review of existing controls.

b. On a continuing basis, management will ensure through internal review of payroll operations, that established policies and procedures are adhered to. Management will ensure that reviews are timely and are staffed by individuals possessing adequate payroll knowledge and review skills.

c. At all supervisory levels diligence is required to ensure that management controls are functioning.

## **4 FAH-3 H-515 Exhibit H-515.1 EMPLOYEE-EMPLOYER RELATIONSHIP**

For U. S. FICA and income tax withholding purposes the term “employee” includes any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

### **THE COMMON LAW RULES**

Under the common law test, a worker is an employee if the person for whom he or she works has the right to direct and control him or her in the way he or she works both as to the final results and as to the details of when, where, and how the work is to be done. The employer need not actually exercise control. It is sufficient that he or she has the right to do so.

If the relationship of employer and employee exists, it is of no consequence whether the employee is designated as a partner, coadventurer, agent, independent contractor, or the like. Furthermore, all classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, and other supervisory personnel are employees.

The factors or elements that show control are described below in the following 20 items. Any single fact or small group of facts is not conclusive evidence of the presence or absence of control.

These common law factors are not always present in every case. Some factors do not apply to certain occupations. The weight to be given each factor is not always constant. The degree of importance of each factor may vary depending on the occupation and the reason for existence. Therefore, in each case there are two things to consider: First, does the factor exist; and second, what is the reason for or importance of its existence or non-existence.

#### **a. Does the factor exist?**

(1) **Instructions**—A person who is required to comply with instructions about when, where, and how he or she is to work is ordinarily an employee. Some employees may work without receiving instructions because they are highly proficient and conscientious workers. However, the control factor is present if the employer has the right to require compliance with the instructions. The instructions which show how to reach the desired result may be oral or written (manuals or procedures).



(2) **Training**—Training a person by an experienced employee working with him or her, by correspondence, by required attendance at meetings, and by other methods indicates that the employer wants the services performed in a particular method or manner. This is especially true if the training is given periodically or at frequent intervals. An independent contractor ordinarily uses his or her own methods and received no training from the purchaser of his or her services. In fact, it is usually his or her methods which bring him or her to the attention of the purchaser.

(3) **Integration**—Integration of the person's services into the business operations generally shows that he or she is subject to direction and control. In applying the integration test, first determine the scope and function of the business and then whether the services of the individual are merged into it. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the people who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

(4) **Services Rendered Personally**—If the services must be rendered personally, presumably the employer is interested in the methods as well as the results. He is interested in not only the result but also the worker.

(5) **Hiring, Supervising, and Paying Assistants**—Hiring, supervising, and paying assistants by the employer generally shows control over the men or women on the job. Sometimes one worker may hire, supervise, and pay the other workers. He or she may do so as the result of a contract under which he or she agrees to provide materials and labor and under which he or she is responsible for only the attainment of a result. In this case he or she is an independent contractor. On the other hand, if he hires, supervises, and pay workers at the direction of the employer, he or she may be an employee acting in the capacity of a foreman for or representative of the employer.

(6) **Continuing Relationship**—A continuing relationship between an individual and the person for whom he or she performs services is a factor which indicates that an employer-employee relationship exists. Continuing services may include work performed at frequently recurring though somewhat irregular intervals either on call of the employer or whenever the work is available. If the arrangement contemplates continuing or recurring work, the relationship is considered permanent even if the services are part-time, seasonal, or of short duration.

(7) **Set Hours of Work**—The establishment of set hours of work by the employer is a factor indicating control. This condition bars the worker from being master of his or her own time, which is the right of the independent contractor. If the nature of the occupation makes fixed hours impractical, a requirement that the worker work at certain times is an element of control.

(8) **Full Time Required**—If the worker must devote his or her full time to the business of the employer, the employer has control over the amount of time the worker spends working and impliedly restricts him or her from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses. Full time does not necessarily mean an 8-hour day or a 5- or 6-day week. Its meaning may vary with the intent of the parties, the nature of the occupation, and customs in the locality. These conditions should be considered in defining “full time.”

Full-time services may be required even though not specified in writing or orally. For example, to produce a required minimum volume of business may compel a person to devote all of his or her working time to that business; or he or she may not be permitted to work for anyone else, and to earn a living he or she necessarily must work full time.

(9) **Doing Work on Employer’s Premises**—Doing the work on the employer’s premises in itself is not control. However, it does imply that the employer has control, especially when the work is the kind that could be done elsewhere. A person working in the employer’s place of business is physically within the employer’s direction and supervision. The use of desk space and telephone and stenographic services provided by an employer places the worker within the employer’s direction and supervision. Work done off the premises indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. Control over the place of work is indicated when the employer has the right to compel a person to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. In some occupations, services must be performed away from the premises of the employer; for example, employees of construction contractors or taxicab drivers.

(10) **Order or Sequence Set**—If a person must perform services in the order or sequence set for him or her by the employer, it shows that the worker is not free to follow his or her own pattern of work but must follow the established routines and schedules of the employer. Often, because of the nature of an occupation, the employer either does not set the order of the services or sets them infrequently. It is sufficient to show control, however, if he or she retains the right to do so. The outside commission salesperson; for example, usually is permitted latitude in mapping out his or her activities and may work “on his own” to a considerable degree. In many cases, however, at

the direction of the employer he or she must report to the office at specified times, follow up on leads, and perform certain tasks at certain times. Such directions interfere with and take preference over the salesperson's own routines or plans; this fact indicates control.

(11) **Oral or Written Reports**—Another element of control is the requirement of submitting regular oral or written reports to the employer. This action shows that the person is compelled to account for his or her actions. Such reports are useful to the employer for present controls or future supervision; that is, they enable him or her to determine whether his or her instructions are being followed or, if the person has been “on his or her own” whether instructions should be issued.

(12) **Payment by Hour, Week, Month**—Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of doing a job. The payment by a firm of regular amounts at stated intervals to a worker strongly indicates an employer-employee relationship. (The fact that payments are received from a third party; for example, tips or fees, is irrelevant in determining whether an employment relationship exists.) The firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the worker. It is also assumed in absence of evidence to the contrary that the worker, by accepting payment upon such basis, has agreed that the firm shall have such right of control. Obviously, the firm expects the worker to give a day's work for a day's pay. Generally, a person is an employee if he or she is guaranteed a minimum salary or is given a drawing account of a specified amount at stated intervals and is not required to repay any excess drawn over commissions earned.

Payment made by the job or on a straight commission generally indicates that the person is an independent contractor. Payment by the job includes a lump sum computed by the number of hours required to do the job at a fixed rate per hour. Such a payment should not be confused with payment by the hour.

(13) **Payment of Business and/or Traveling Expense**—If the employer pays the person's business and/or traveling expenses, the person is ordinarily an employee. The employer, to be able to control expenses, must retain the right to regulate and direct the person's business activities.

Conversely, a person who is paid on a job basis and who has to take care of all incidental expenses is generally an independent contractor. Since he or she is accountable only to himself or herself for his or her expenses, he or she is free to work according to his or her own methods and means.

(14) **Furnishing of Tools, Materials**—The fact that an employer furnishes tools, materials and so on tends to show the existence of an employer-employee relationship. Such an employer can determine which tools the person is to use and, to some extent, in what order and how they shall be used.

An independent contractor ordinarily furnishes his or her own tools. However, in some occupational fields; for example, skilled workers, the workers customarily furnish their own tools. They are usually small hand tools. Such a practice does not necessarily indicate a lack of control over the services of the worker.

(15) **Significant Investment**—Investment by a person in facilities used in performing services for another is a factor which tends to establish an independent contractor status. On the other hand, lack of investment indicates dependence on the employer for such facilities and, accordingly, the existence of an employer-employee relationship.

In general, facilities include equipment or premises necessary for the work, such as office furniture, machinery and so on. This term does not include tools, instruments, clothing and so on commonly provided by employees in their trade, nor, does it include education, experience, or training.

In order for an investment to be a significant factor in establishing that an employer-employee relationship does not exist, it must be real, essential, and adequate.

Little weight can be accorded to a worker's investment in equipment if he or she buys it on time from the person for whom he or she does the work and if his or her equity in the equipment is small. The same is true if the worker purchases equipment from his or her employer on a time basis but the employer retains title to the equipment, has the option of retaining legal ownership by paying the worker the amount of his or her equity in the equipment at any time before the equipment is fully paid for, requires its exclusive use in the operation of his or her business, and directs the worker in its use. Such investments are not "real."

An investment in equipment or premises not required to perform the services in question is not essential. For example, a photographers' model may have a large investment in a wardrobe; however, if he or she poses for a photographer who ordinarily requires that his or her models wear clothing he or she furnishes, model's investment is not essential even though the photographer lets him or her use their own wardrobe as a matter of indulgence. The photographer hires him or her only for his or her photogenic qualities and his or her ability to pose; it is not required that he or she furnish his or her own wardrobe.

Ownership by an individual of facilities adequate for the work and independent of the facilities of another points to an independent contractor relationship. Ownership of such facilities is an influential factor in letting the contract of service. The important point is the value of the investment compared to the total value of all the facilities for doing the work. An investment in facilities is not adequate if the worker must rely appreciably on the facilities of others to perform the services. For instance, an individual who is engaged to perform a machine operation on his or her own premises and who furnishes his or her own equipment of substantial value may be a self-employed subcontractor instead of an employee of the manufacturer.

Significant in determining the weight of the investment factor is ascertaining who has the right to control the facilities. Ownership of equipment or premises points toward an independent contractor status because it is inferred that the owner has the right to control their use. However, if the owner, as part of the agreement, surrenders complete dominion over the equipment or premises and the right to decide how they shall be used, "ownership" loses its significance.

Suppose an individual who owns a truck is hired by a trucking company to deliver goods and materials to business firms. The fact that he or she uses his or her own truck to perform these services is not significant if, in general, the firm uses it like its own trucks. For example, the firm sets the order and time of deliveries; pays for all upkeep and repair of the individual's truck while used in its business or otherwise compensates the individual for these costs; restricts him or her from using the truck to perform services for others and so on.

(16) **Realization of Profit or Loss**—The person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, but the individual who cannot is an employee.

"Profit or loss" implies the use of capital by the individual in an independent business of his or her own. Thus, opportunity for higher earnings, such as from pay on a piecework basis or the possibility of gain or loss from a commission arrangement is not considered profit or loss.

Whether a profit is realized or loss suffered generally depends upon management decisions; that is, the one responsible for a profit or loss can use his or her own ingenuity, initiative, and judgment in conducting his or her business or enterprise. Opportunity for profit or loss may be established by one or more of a variety of circumstance; for example:

- (a) The individual hires, directs, and pays assistants;
- (b) The individual has own its office, equipment, materials, or other work facilities;
- (c) The individual has continuing and recurring liabilities or obligations, and his or her success or failure depends on the relation of his or her receipts to his or her expenditures;
- (d) The individual agrees to perform specific jobs for prices agreed upon in advance and pay expenses incurred in connection with the work;
- (e) The individual's services and/or those of his or her assistants establish or affect his or her business reputation and not the reputation of those who purchase the services.

(17) **Working for More Than One Firm at a Time**—A person who works for a number of persons or firms at the same time is generally an independent contractor because he or she is usually free from control by any of the firms. It is possible, however, for a person to work for a number of people or firms and be an employee of one or all of them.

(18) **Making Service Available to General Public**—The fact that a person makes his or her services available to the general public usually indicates an independent contractor relationship. An individual may hold his or her services out to the public in a number of ways: he or she may have his own office and assistants; he or she may hang out a “shingle” in front of his or her home or office; he or she may hold business licenses; he or she may be listed in business directories or maintain business listings in telephone directories; or he or she may advertise in newspapers, trade journals, magazines and so on.

(19) **Right to Discharge**—The right to discharge is an important factor in indicating that the person possessing the right is an employer. He or she exercises control through the ever-present threat of dismissal, which causes the worker to obey his or her instructions. An independent contractor, on the other hand, cannot be fired as long as he or she produces a result which meets his or her contract specifications.

(20) **Right to Terminate**—An employee has the right to end his or her relationship with his or her employer at any time he or she wishes without incurring liability. An independent contractor usually agrees to complete a specific job; he is responsible for its satisfactory completion or legally obligated to make good for failure to complete the job.

b. **What is the reason for or importance of its existence or nonexistence?**

All facts must be weighed, and the conclusion must be based on a careful evaluation of all the facts, IRS published rulings, and the presence or absence of factors which point to an employer-employee relationship or to an independent contractor status.

Take the example of a barbershop. The shop owner may say that he does not control the hours, fix the amount charged for a haircut, or control the barber's cleanliness. However, in determining the weight of each of these factors, the agent should consider the reason for their nonexistence. He or she may find that the union in effect controls the hours and sets the price for haircuts and that the State Barber Board of Examiners controls the cleanliness of the shop. He or she correctly concludes, then, that the weight to be given each of these three factors is nothing. In the case of salespersons, it might be found that the employer does not control the hours of work because, to make a sale, the salesperson may have to arrange his or her hours to fit the customers' hours, such as calling in the evening when the husband and wife are at home. This may be true of other occupations. The important thing is to weight any factor being considered according to its reason for existence or nonexistence.

## **FICA STATUTORY EMPLOYEE RULES**

In addition to common law employees, the Federal Insurance Contributions Act (FICA) provides for statutory employees, which include (1) agent drivers and commission drivers, (2) full-time life insurance salespersons, (3) home workers, and (4) traveling or city salespersons.